

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-20129

D-12 VICTOR CARLOS CASTANO,
D-14 MICHAEL KENNETH RICH, and
D-17 DAVID RANDY DROZDOWSKI

Defendant.

ORDER DIRECTING DEFENDANTS TO RESPOND

Pending before the court is the Government's "In Limine Motion To Preclude Use Of Third Party Writings To Impeach Witnesses During Trial." The motion appears to be sound and the court is, at this time, inclined to grant the motion and limit the use of third-party writings such as FBI Form 302s. Consistent with Supreme Court and Sixth Circuit precedent, these third party writings are not properly considered prior statements of a testifying witness. *United States v. Nathan*, 816 F.2d 230, 236 (6th Cir. 1987) (citing *Palermo v. United States*, 360 U.S. 343, 350 (1959)). They are, instead, the "selections, interpretations, and interpolations" of investigators, *id.*, and thus cannot be used to impeach witnesses under Federal Rule of Evidence 613. Other judges of this district have reached the same conclusion. See *United States v. Silber*, No. 09-20223, 2010 WL 1222723, at *2 (E.D. Mich. March 25, 2010) (Roberts, J.).

The court now directs Defendants to respond to the Government's motion by **Monday, October 26, 2015 at 12:00 p.m.** Defendants' counsel may respond orally before court or in a written motion not to exceed ten pages.

s/Robert H. Cleland

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 23, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 23, 2015, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522